

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**BEFORE THE  
FEDERAL ELECTION COMMISSION** 2008 OCT 29 A 11: 49

Brian S. Colón, Chairman  
Democratic Party of New Mexico

Complainant,

v.

Darren White  
P.O. Box 16601  
Albuquerque, NM 87191

Republican Campaign Committee of New Mexico  
PO Box 94083  
Albuquerque, NM 87199

Freedom's Watch  
401 9th St. NW  
Washington, DC 20004

MUR # 6/20

Respondent.

**COMPLAINT**

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Darren White, the Republican Campaign Committee of New Mexico (RCCNM), and Freedom's Watch ("Respondents") for multiple violations of the Federal Election Campaign Act, as described below.

**A. FACTS**

Darren White is a candidate for the United States House of Representatives in New Mexico's First Congressional District. He is also a member of the New Mexico Republican Party ("NMRP") Executive Committee. Attachment A. The Republican Campaign Committee of New Mexico is a qualified party committee that is registered with the FEC. On information and belief, it is the name of NMRP's federal political committee.

Freedom's Watch is a nonprofit corporation that is incorporated under the laws of the District of Columbia. The head of Freedom's Watch is Carl Forti. Forti reportedly ran the NRCC's independent expenditure program during the 2006 election cycle while serving also as its communications director. He left the NRCC to work on Mitt Romney's presidential campaign, and then joined Freedom's Watch in March 2008.

On or about October 14, 2008, Freedom's Watch began airing an advertisement titled "Asked to Explain," attacking White's opponent, Martin Heinrich. On October 3, 2008, Freedom's Watch filed Form 9 with the FEC, reporting that it disbursed \$10,000 to Stevens, Reed, Curcio & Potholm, a political consulting firm, for "Media Production." On information and belief, complainants allege that Stevens, Reed, Curcio & Potholm produced "Asked to Explain." "Asked to Explain" is the third advertisement attacking Heinrich that Freedom's Watch has aired. In total, Freedom's Watch has spent \$230,004.18 **[ADD 10/14 BUY]** on advertisements attacking Heinrich.

On or about October 14, 2008, the RCCNM also began airing an advertisement attacking Martin Heinrich, titled "Can't Trust." RCCNM reported this as an independent expenditure to the FEC on October 14, 2008, where it reported disbursing \$240,000.00 to Stevens, Reed, Curcio & Potholm for a "Media Buy." RCCNM did not report any other disbursements in connection with this advertisement so, presumably, Stevens, Reed, Curcio & Potholm produced the advertisement. Both "Asked to Explain," and "Can't Trust" contain the same two images of Martin Heinrich.

**B. LEGAL ARGUMENT:**

**1. Legal Background**

The Federal Election Campaign Act limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). It is illegal for anybody to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,300 per election, and it is illegal for anybody to contribute, and for any State political party committee to receive, contributions to State party committees in excess of \$10,000 in a year. *Id.* FECA also prohibits corporations from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a).

Federal campaign finance law treats coordinated expenditures by a non-party, non-candidate sponsor as in-kind contributions to the candidate or political party with whom they were coordinated. *See* 2 U.S.C. § 441a(a)(7)(B)(i)-(ii); 11 C.F.R. § 109.21(b). It similarly treats party communications coordinated with a candidate as contributions to the candidate. *See* 11 C.F.R. § 109.37. Coordination occurs if the candidate or party requested or suggested the ad; if the candidate or party was materially involved in decisions about it; if the candidate or party and the sponsor had substantial discussions in which information material to the ad was conveyed; or if a former candidate or party employee, consultant, or *common vendor* used candidate or party information in producing the ad for the sponsor. *See id.* § 109.21(d) (emphasis added).

**2. RCCNM Made, and White Accepted, an Illegal In-Kind Contribution**

There is strong evidence that RCCNM's advertisement, "Can't Trust," was coordinated with White. White serves on the executive committee of the New Mexico Republican Party. It is implausible that the NMRP's federal political committee, RCCNM, could have made the

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decision to air "Can't Trust" without the assent or material involvement of, or substantial discussion with, White or one of his agents.

Assuming that there was coordination, White and RCCNM violated 2 U.S.C. § 441a: RCCNM knowingly made, and White knowingly accepted, prohibited contributions well in excess of \$2,300.

**3. Freedom's Watch Made, and RCCNM Accepted, an Illegal In-Kind Contribution to RCCNM**

There is also strong evidence that Freedom's Watch's advertisement, "Asked to Explain," was coordinated with RCCNM. Both Freedom's Watch and RCCNM used the same vendor, Stevens, Reed, Curcio & Potholm, to produce television advertisements attacking Martin Heinrich. Both advertisements used two identical images of Heinrich. This strongly suggests information-sharing between RCCNM and Freedom's Watch. It further suggests that Stevens, Reed, Curcio & Potholm – a common vendor – used material information in the RCCNM ad, and then used the same information in the Freedom's Watch ad. That Freedom's Watch is run by a former senior NRCC employee, and has spent lavishly in House races while the NRCC's budget is stretched thin, shows the motive and opportunity for coordination.

Assuming that there was coordination, Freedom's Watch and RCCNM both violated sections 441a and 441b: Freedom's Watch made, and RCCNM accepted, prohibited corporate contributions in excess of \$10,000.

**4. Freedom's Watch May Have Failed to Register as a Political Committee with the FEC**

Any political committee that makes expenditures aggregating in excess of \$1,000 during a calendar year must file a statement of organization with the FEC. 2 U.S.C. §§ 431(4), 433. If "Asked to Explain" was coordinated with RCCNM, Freedom's Watch would have made an

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expenditure well in excess of \$1,000 and, thus, would have been required to register as a political committee. It failed to do so.

**5. White, RCCNM, and Freedom's Watch May Have Failed to Properly Report Coordinated Communications**

Political committees must report all expenditures to the Commission. 2 U.S.C. § 434. Commission regulations require that coordinated communications be reported to the Commission as expenditures. 11 C.F.R. § 109.21(b)(1). Candidates and their authorized committees must report coordinated communications made on their behalf to the FEC as both expenditures and receipts. 11 C.F.R. § 109.21(b)(3). Political committees that make coordinated communications must report these as both contributions and expenditures. *Id.*

Assuming that "Can't Trust" was coordinated with White, White was obligated to report the cost of the expenditure as a receipt and as an expenditure. He failed to do so.

Similarly, assuming that "Asked to Explain" was coordinated with the RCCNM, RCCNM was required to report the cost of the communication as a receipt and an expenditure, and Freedom's Watch was required to report the communication as a contribution and an expenditure. Neither party reported "Asked to Explain" in this manner.

**C. REQUESTED ACTION**

As we have shown, there is substantial evidence that Respondents have violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Submitted by:

Brian S. Colón, Chairman  
Democratic Party of New Mexico  
1301 San Pedro NE  
Albuquerque, NM 87110



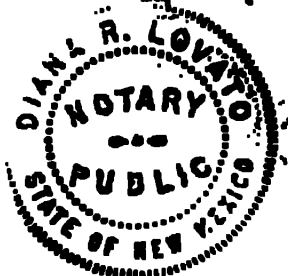
Brian S. Colón, Esq.

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of October, 2008.

  
Notary Public

My Commission Expires:

11/30/2011





## **SCHEDULE E**

### **INDEPENDENT EXPENDITURES**

**FILING FEC-368057**

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**Committee: REPUBLICAN CAMPAIGN COMMITTEE OF  
NEW MEXICO**

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#### **Stevens, Reed, Curcio & Potholm**

201 N Union St  
Suite 200  
Alexandria, Virginia 223142642

Purpose of Expenditure: Media Buy  
Name of Federal Candidate supported or opposed by expenditure: MARTIN HEINRICH  
Candidate ID: H8NM01224  
Office Sought: House of Representatives  
State is New Mexico in District 01  
Date Expended = 10/14/2008  
Person Completing Form: John Chavez  
Date Signed = 10/14/2008

Amount Expended = \$240000.00  
Calendar YTD Per Election for Office Sought = \$240000.00

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Subtotal of Itemized Independent Expenditures = \$240000.00  
Subtotal of Unitemized Independent Expenditures = \$0.00  
Total Expenditures This Period = \$240000.00

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# FEC FORM 9

## 24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR ELECTIONEERING COMMUNICATIONS

### 1. Person Making the Disbursements/Obligations

(a) Name

Freedom's Watch Inc.

(b) Address (number and street) ☐ check if different than previously reported

401 9th St. NW

2. FEC Identification Number

C 30000756

(c) City, State and ZIP Code  
Washington, DC 20004

(d) Name of Employer or Principal Place of Business

(e) Occupation

3. Is This Statement ☒ New  
or  
☐ Amended

4. Covering Period

10 10 2008  
through  
10 15 2008

5. (a) Date of Public Distribution 10 15 2008

(b) Classification Type "Asked To Explain"

6. The filer is: (a) Individual (b) Unincorporated Organization (c) Qualified Nonprofit Corporation (11 CFR 114.10)

(d) ☒ Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.10

(e) Other, specify:

7. If the filer is an individual, unincorporated organization or qualified nonprofit corporation, were the disbursements made exclusively from donations to a segregated bank account? yes no ☒

### 8. Custodian of Records

(a) Name

Douglas W. Robinson

(b) Address (number and street)

401 9th St. NW

(c) City, State and ZIP Code

Washington, DC 20004

(d) Name of Employer or Principal Place of Business

(e) Occupation

Freedom's Watch, Inc.

Chief Financial Officer

### 9. Total Donations This Statement

0.00

### 10. Total Disbursements/Obligations This Statement

214,744.90

Under penalty of perjury, I certify that this statement is true, correct and complete.

TYPE OR PRINT NAME OF PERSON SIGNING STATEMENT

Douglas W. Robinson

SIGNATURE

*D. Robinson*

DATE

10/15/08

NOTE: Submission of false information or incomplete information may subject the person filing this statement to the penalties of 18 USC 549b.

FEC FORM 9 (DEC 12/2007)

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List of Person(s) Sharing/Exercising Control  
(Use additional pages as necessary)

PAGE 2 OF 4

11. Person(s) Sharing/Exercising Control

A. (a) Name	Joe Sessler
(b) Address (number and street)	5858 Central Avenue
(c) City, State and ZIP Code	St. Petersburg, FL, 33707-1728
(d) Name of Employer or Principal Place of Business	The Sessler Company
(e) Title	Chairman
B. (a) Name	Matthew Brooks
(b) Address (number and street)	50 F Street NW Suite 100
(c) City, State and ZIP Code	Washington, DC 20001
(d) Name of Employer or Principal Place of Business	Republican Jewish Coalition
(e) Title	Executive Director
C. (a) Name	Ari Fleischer
(b) Address (number and street)	624 Old Post Road
(c) City, State and ZIP Code	Bedford, NY 10506
(d) Name of Employer or Principal Place of Business	Fleischer Communications
(e) Title	President
D. (a) Name	William Weidner
(b) Address (number and street)	3355 Las Vegas Blvd South
(c) City, State and ZIP Code	Las Vegas, NV 89109
(d) Name of Employer or Principal Place of Business	Las Vegas Sands Corporation
(e) Title	President
E. (a) Name	
(b) Address (number and street)	
(c) City, State and ZIP Code	
(d) Name of Employer or Principal Place of Business	
(e) Title	

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**SCHEDULE B-A**  
**Donations Received**

PAGE 3 OF 4

<b>A. Full Name of Donor</b> <hr/> <b>Mailing Address of Donor</b> <hr/> <b>City</b> <hr/> <b>State</b> <hr/> <b>Zip</b> <hr/>		<b>Date of Receipt</b> <hr/> <b>Amount</b> <hr/>
<b>B. Full Name of Donor</b> <hr/> <b>Mailing Address of Donor</b> <hr/> <b>City</b> <hr/> <b>State</b> <hr/> <b>Zip</b> <hr/>		<b>Date of Receipt</b> <hr/> <b>Amount</b> <hr/>
<b>C. Full Name of Donor</b> <hr/> <b>Mailing Address of Donor</b> <hr/> <b>City</b> <hr/> <b>State</b> <hr/> <b>Zip</b> <hr/>		<b>Date of Receipt</b> <hr/> <b>Amount</b> <hr/>
<b>D. Full Name of Donor</b> <hr/> <b>Mailing Address of Donor</b> <hr/> <b>City</b> <hr/> <b>State</b> <hr/> <b>Zip</b> <hr/>		<b>Date of Receipt</b> <hr/> <b>Amount</b> <hr/>
<b>E. Full Name of Donor</b> <hr/> <b>Mailing Address of Donor</b> <hr/> <b>City</b> <hr/> <b>State</b> <hr/> <b>Zip</b> <hr/>		<b>Date of Receipt</b> <hr/> <b>Amount</b> <hr/>
<b>SUBTOTAL of Donations This Page (optional)</b> <hr/>		
<b>TOTAL This Period (last page this line has no input only)</b> <hr/> <b>(carry over from last page or Line 12)</b>		

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**SCHEDULE B-B**

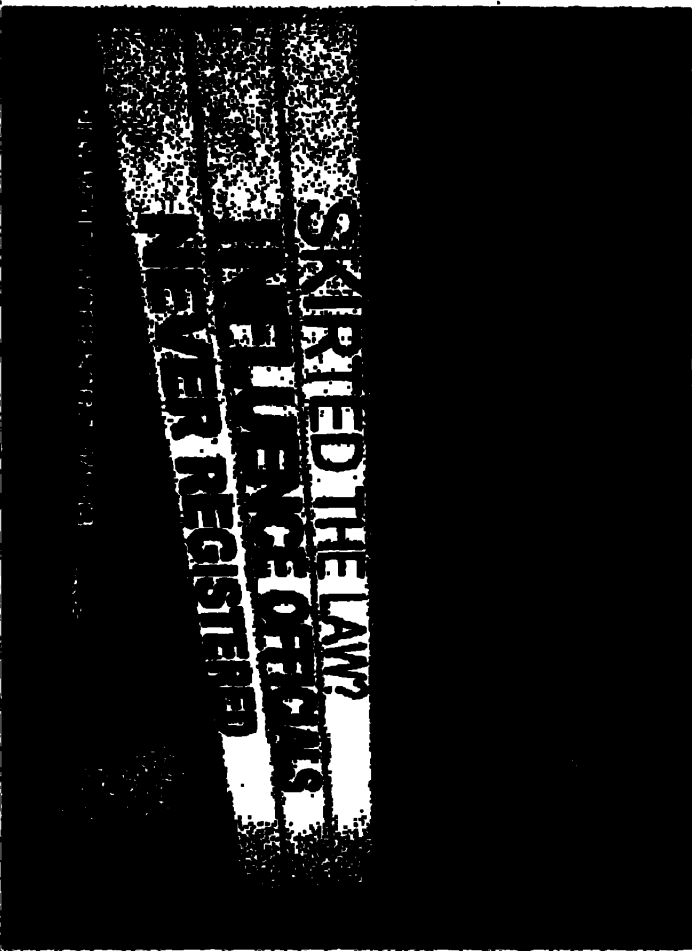
**Disbursements Made or Obligations**

PAGE 4 OF 4

<b>A. Full Name (Last, First, Middle Initial) of Payee</b> <b>Crossroads Media</b>				<b>Date of Disbursement or Obligation</b> 10 10 2008	
<b>Mailing Address of Payee</b> <b>66 Canal Center Plaza Suite 555</b>				<b>Amount</b> 204,747.90	
<b>City</b> <b>Alexandria</b> <b>State</b> <b>VA</b> <b>Zip Code</b> <b>22314</b>				<b>Communication Date</b> 10 15 2008	
<b>Name of Employer</b> <b>Commission</b>					
<b>Purpose of Disbursement (including name of representative)</b> <b>Media Placement</b>					
<b>Name of Federal Candidate</b> <b>Martin Heinrich</b>		<b>Office Sought</b> <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>Name of Federal Candidate</b>		<b>Office Sought</b> <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>Name of Federal Candidate</b>		<b>Office Sought</b> <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>B. Full Name (Last, First, Middle Initial) of Payee</b> <b>Stevens Reed Curcio &amp; Potholm</b>				<b>Date of Disbursement or Obligation</b> 10 10 2008	
<b>Mailing Address of Payee</b> <b>201 W Union Street, Suite 200</b>				<b>Amount</b> 9,997.00	
<b>City</b> <b>Alexandria,</b> <b>State</b> <b>VA</b> <b>Zip Code</b> <b>22314</b>				<b>Communication Date</b> 10 15 2008	
<b>Name of Employer</b> <b>Commission</b>					
<b>Purpose of Disbursement (including name of representative)</b> <b>Media Production</b>					
<b>Name of Federal Candidate</b> <b>Martin Heinrich</b>		<b>Office Sought</b> <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>Name of Federal Candidate</b>		<b>Office Sought</b> <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>Name of Federal Candidate</b>		<b>Office Sought</b> <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		<b>Disbursement/Obligation For</b> <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) _____	
<b>SUBTOTAL of Disbursements/Obligations This Page (optional)</b>				214,744.90	
<b>TOTAL This Period (last page this line number only)</b> (carry total from last page in this 10)				214,744.90	

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SKIPPED THE LAW?  
INFLUENCE OFFICIALS  
NEVER REGISTERED

00:00:15



MARTIN HEINRICH

00:00:15

